No. 695 .....

APR
CHARLES ELM

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.

RED ROCK COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

M. E. KILPATRICK,
1045 Hurt Building,
Atlanta, Georgia,
Attorney for Petitioner.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement	3
1. Complaint	3
2. Answer as amended and motions	3
3. Board ruling that issue of compliance not litigable—Offer of proof by company	4
4. Board "administratively advised" of compliance	5
5. Court's ruling on issue of Section 9 (f), (g), and (h) noncompliance	5
6. Ruling on refusal to bargain	6
Specification of errors to be urged	8
Reasons for granting writ	10
1. Issue of noncompliance by union	10
2. Refusal to recognize union	12
Conclusion	13
Appendix. Pertinent provisions of Labor Management Relations Act of 1947 (Act of June 23, 1947, 61 Stat. 136 et seq., 29 U. S. C. A. 141 et seq.)	15

Citations.

Cases:	
Fay v. Douds, 172 F. (2) 720	11
Hannegan v. Esquire, 327 U. S. 146 (66 S. Ct. 456)	11
National Labor Relations Board v. Jones and Laughlin, 301 U. S. 1 (57 S. Ct. 615)	11

JUL 22 1953

National Labor Relations Board v. Michigan Electric Co., 318 U. S. 9 (63 S. Ct. 394) 12

Osman v. Douds, 339 U. S. 846 (70 S. Ct. 901) 10

Social Security Board v. Nierotko, 327 U. S. 358 (66 S. Ct. 637) 11

Stark v. Wickard, 321 U. S. 288 (64 S. Ct. 559) 11

U. S. Steel Workers of America et al. v. N. L. R. B., 339 U. S. 382 (70 S. Ct. 674) 10

Statute:

Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. A. Supp. 141 et seq.):

Section 9 (a) 13, 15

Section 9 (c) 13, 15

Section 9 (d) 16

Section 9 (f) 2, 3, 4, 5, 8, 10, 16

Section 9 (g) 2, 3, 4, 5, 18

Section 9 (h) 2, 3, 4, 5, 10, 18

Section 10 (b) 12, 19

Section 10 (e) 12, 20

No. .....

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1950.

RED ROCK COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit.

The petitioner, RED ROCK COMPANY, hereby prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered February 15, 1951, which enforced as to petitioner the order of the National Labor Relations Board (hereinafter called Board) against petitioner.

OPINIONS BELOW.

The opinion of the Court of Appeals (T. 184) is not yet reported. The decision of the Board (T. 94-111) is reported at 84 N. L. R. B. 521.

(T.) refers to Transcript of Record; (B. A.) to Appendix to Board's Brief in C. C. A.; (A.) to Appendix to Company's Brief in C. C. A.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 15, 1951 (T. 190). The petition of Red Rock Company for rehearing, filed March 1, 1951 (T. 191-197), was denied on March 9, 1951 (T. 199). The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act as amended by the Labor Management Relations Act of 1947 (hereinafter called the Act) and under 28 U. S. C. A. 1254 (1).

QUESTIONS PRESENTED.

(1) Did the amended answer of Red Rock Company, alleging that the Board was without jurisdiction to issue the complaint because the charging Union had not complied with the filing requirements of Section 9 (f), (g) and (h) of the Act, make a litigable issue before the Board as to such alleged noncompliance;

(2) If such issue is litigable, was the Board's decision, affirmed by the Court of Appeals, finding compliance by the Union, based solely upon so-called "administrative advice" entirely outside the record, supported by any substantial evidence;

(3) Was the Board's decision, affirmed by the Court of Appeals, finding that Red Rock Company had indulged in unfair labor practices in refusing to recognize the Union as the bargaining agent for its driver-salesmen, supported by any substantial evidence?

STATUTE INVOLVED.

The pertinent provisions of the Act are set forth in the Appendix, pages 15 to 22.

STATEMENT.

Charges were filed by Local 859 of the International Brotherhood of Teamsters and Warehousemen and Helpers, A. F. of L. The Board's order was directed against both Red Rock Company and Red Rock Cola Company. The Court of Appeals, however, in so far as concerned Red Rock Cola Company, refused enforcement (T. 188). Therefore, no further reference to Red Rock Cola Company is deemed pertinent to this application. Petitioner is hereinafter referred to as Company.

1. Complaint.

There was no affirmative allegation in the complaint with respect to compliance or noncompliance by the Union with the filing requirements of Section 9 (f), (g) and (h) of the Act.

The complaint, in so far as material to the questions as to which review is sought, charged the Company with alleged unfair labor practices in refusing to recognize the Union as bargaining agent for its driver-salesmen employees.

2. Answer as Amended and Motions.

The original answer of the Company denied all allegations of unfair labor practices set forth in the complaint. By its amended answer the Company alleged affirmatively:

> ". . . that the National Labor Relations Board is without jurisdiction to issue a complaint in that the labor organization therein referred to has not complied with Section 9 (f), (g) and (h) of the Labor Management Relations Act of 1947 . . ." (T. 48).

By written exceptions and motions, and by oral motions the Company made the same contention (T. 153; A. 2, 124).

3. Board Ruling That Issue of Compliance Not Litigable—Offer of Proof by Company.

(a) The Trial Examiner and the Board ruled that the question of noncompliance by the Union with the filing requirements of Section 9 (f), (g) and (h) of the Act could not be put in issue by the Company (R. A. 8-9; T. 95). The Board in its decision stated:

> "We have previously decided, in both unfair labor practice and representation cases, that compliance with the filing requirements of Section 9 (f), (g) and (h) is a matter for administrative determination by the Board and is not litigable by the parties" (T. 95, note 2).

Based upon such ruling, the Trial Examiner, who was sustained by the Board, granted motions of the Board and the Union to quash subpoena duces tecum, which had been issued to the Regional Director of the Board and to the Union representative at the request of the Company, calling for production of documents relating to the issue of noncompliance (R. A. 6-9).

Promptly upon such ruling by the Trial Examiner, the Company's counsel made an offer of proof as follows:

> "The rulings which have just been announced by the examiner have the effect of preventing or precluding the respondents from showing that the labor organization which filed the charges and amended charges has not complied with the requirements of Section 9. In order to complete the record, I wish to state what the proof would show, except for the ruling of the examiner which prevents us from going into that question. The proof, if admitted in this proceeding, would show that the labor organization has not complied with the filing requirements of Section 9" (T. 187, note 2; R. A. 9).

4. Board "Administratively Advised" of Compliance.

Though ruling that compliance was not litigable, the Board nevertheless, through so-called "administrative advice" found as a fact that the Union had complied with Section 9.

> "Moreover, we are administratively advised that the Union has fully complied with the filing requirements of the amended Act" (T. 95).

There is no evidence in the record of such "advice".

5. Court's Ruling on Issue of Section 9 (f), (g) and (h) Noncompliance.

The Court of Appeals in its decision, however, though recognizing that the Company by its answer, as well as by oral and written motions, had raised the issue of the Union's noncompliance,[1] ruled that the Company before the Board had ". . . relied therein, and it must rely here, not upon any proof of its own that the Union had not complied, but upon what it deems the failure of the Union and the Board to carry their burden . . ."[2]

The Court of Appeals, moreover, in its opinion approved the decision of the Trial Examiner and of the Board that the question of compliance was not a matter for pleading and proof at the Board hearing, but was an administrative matter to be determined by the Board itself and that the matter of compliance is not litigable by the parties in this proceeding (T. 187). The Court of Appeals specifically upheld the Board's decision that ". . . we are adminis-

---

1 "It is true that Respondent does assert here that, by answer and oral and written motions and expressions, it did undertake below to raise, and to support by proof, its contention that the Union was not in compliance" (T. 186).

2 "An examination of the appendix to Respondent's brief, however, shows that, aside from causing subpoenas to issue, Respondent made no effort to prove affirmatively that there was no compliance" (T. 186).

tratively advised that the Union has fully complied with the filing requirements of the amended act."

At the same time, the Court of Appeals observed that it was not deciding that if, upon a petition for enforcement, **"it is made to appear to this court"** by clear and positive proof that the Board had taken jurisdiction of a charge made by a noncomplying union [with respect to Section 9 (h)] that the court would enforce the Board's order.[3]

6. **Ruling on Refusal to Bargain.**

The Court of Appeals sustained the Board's decision that the Company's refusal to recognize the Union as bargaining agent for the Company's fifteen driver-salesmen was an unfair labor practice.

The facts before the Board and the Court on this issue were as follows:

On February 19, 1947, the Union representative by telegram requested the Company to meet with him and to bargain for the Company's driver-salesmen. The same day he filed a petition for certification (R. A.-G. C. Exh. 2). Following this, a Company official showed the telegram to the driver-salesmen, along with a petition addressed to this official, making reference to the telegram and stating that the persons signing the telegram desired to bargain for themselves and not through a union. The driver-salesmen signed this application along with telegrams which they sent to the Union withdrawing from the Union. The telegrams were requested by several of the driver-salesmen and were prepared by this Company official, with the form of telegram being made available to all of the driver-salesmen.

---

3 "This is not to hold that if, on a petition for enforcement, it is made to appear to this court by clear and positive proof that the Board has, contrary to the Statute, taken jurisdiction of a charge made by a noncomplying union . . . this court would enforce the Board's order. On this record, that question is not before us" (T. 187).

Following a meeting between the Union representative and the Company's counsel, the Union representative on March 1, 1948, advised that it was not his desire to represent employees unless they wished it, the Union representative suggesting a secret ballot. The Company's counsel replied that since the employees had stated to the management that they were not represented by the Union, that there appeared to be no occasion for holding an election (R. A. 64-66).

The Union representative on Feb. 19, 1948, had filed with the Board a petition for an election and certification, and this petition he dismissed on March 1, 1948, the same day that he filed on behalf of the Union charges against the Company (T. 9).

SPECIFICATION OF ERRORS TO BE URGED.

The Court of Appeals erred:

1. In sustaining the decision of the Board that the question of compliance by the charging Union with Section 9 of the Act was not litigable before the Board, but was an administrative matter to be determined by the Board itself.

2. In sustaining the Board's finding of fact (based solely upon so-called "administrative advice") that the charging Union had complied with the filing requirements of Section 9 of the Act, when:

(a) The issue of noncompliance by the Union had been raised before the Board by the Company's amended answer;

(b) There was no evidence before the Board and none in the record before the Court to support such finding; and

(c) The said finding based upon such "administrative advice" was entirely outside the record made before the Board.

3. In construing the Company's position before the Board as being limited to the contention that there was no jurisdiction in the Board because of failure of the Board to affirmatively allege and prove compliance by the Union with Section 9 of the Act, when, in fact, the Company's contention before the Board was a double-barreled one, namely:

(a) There was an affirmative allegation in Respondent's amended answer that the Board was without jurisdiction in that the Union had not complied with the filing requirements of Section 9 of the Act;

(b) There was an objection made to the introduction in the record of the pleadings (charges and complaint) on the ground that such pleadings on their face failed to show compliance with Section 9 and that, therefore, such pleadings were not properly allowed in the record (A. 2).

4. In sustaining the Board's findings that the Company had indulged in an unfair labor practice in refusing to recognize the Union as the bargaining agent for its driver salesmen, when the record disclosed:

(a) That the Union had never been certified by the Board as the bargaining agent of driver salesmen;

(b) That the Union had not been recognized by the Company as bargaining agent for such employees; and

(c) That the Company had questioned the Union's claim and had been advised by its employees that they desired to bargain for themselves.

REASONS FOR GRANTING WRIT.

The questions upon which review is sought are important both from a substantive and procedural standpoint. The questions involve the construction and application of provisions of the Act which have never yet been before this Court, but are constantly recurring before the Board and Courts of Appeal. Such questions should be promptly settled by this Court so as to expedite future litigation before the Board and the courts.

1. Issue of Noncompliance by Union.

The decision of the Board and of the Court of Appeals precludes an employer from raising before the Board the issue of noncompliance with Section 9 by a charging union. This Court has expressly upheld the constitutionality of the provisions of Section 9 (h) of the Act which conditions recognition of a labor union in utilizing processes of the Board upon the filing of non-communistic affidavits.

U. S. Steel Workers of America et al. v. N. L. R. B., 339 U. S. 382 (70 S. Ct. 674);
Osman v. Douds, 339 U. S. 846 (70 S. Ct. 901).

In the former case, this Court held that the provisions of the Act conditioning recognition of labor organizations upon filing of such non-communistic affidavits by its officers is designed to protect the public against what Congress has concluded the Communists and others identified with them have done and are likely to do.

If the decision of the Board and of the Court of Appeals herein is permitted to stand as a correct enunciation of the meaning and intent of the Act, then in spite of the grave danger which Congress believed to exist through such Communist activities, the Board's determination in an ad-

ministrative procedure entirely outside of any record, as to its jurisdiction, in turn dependent upon compliance, is final and not subject to challenge at any place in the proceedings. This result, foreclosing all challenge to the Board's jurisdiction, will obtain regardless of whether in fact a union invoking the jurisdiction of the Board's processes has or has not complied.

Similar claims by governmental agencies to paramount and unreviewable power to determine their jurisdiction or authority have been rejected by this Court as follows:

In **Stark v. Wickard**, 321 U. S. 288 (64 S. Ct. 559), holding that the responsibility of determining limits of statutory grants of authority is a judicial function entrusted to the courts by Congress;

Hannegan v. Esquire, 327 U. S. 146 (66 S. Ct. 456), rejecting Postmaster General's similar contentions;

National Labor Relations Board v. Jones and Laughlin, 301 U. S. 1 (57 S. Ct. 615), holding that upon review of a Board's order all questions of jurisdiction of the Board are open to examination by the Court;

Social Security Board v. Nierotko, 327 U. S. 358 (66 S. Ct. 637), holding that an agency may not finally decide the limits of its statutory power, which is a judicial function.

Though of a less serious nature and of less serious consequences, the requirements of Section 9 (f) and (g) with respect to filing of financial data would likewise be foreclosed by the Board's decision. The constitutionality of such requirements have been upheld by the Circuit Court of Appeals for the Second Circuit in **Fay v. Douds**, 172 F. (2) 720.

If the issue of noncompliance raised before the Board by the Company's amended answer in the present pro-

ceeding is a litigable issue, then the findings by the Board in the present case are wholly unsupported by any evidence, in direct contravention of the requirements of Section 10 (b) and (e) of the Act, and the Company has been deprived of the opportunity afforded under Section 10 (b) of appearing and giving testimony upon issues raised by the complaint and answer.

This result is in conflict with this Court's decision in **N. L. R. B. v. Michigan Electric Co.**, 318 U. S. 9 (63 S. Ct. 394), holding that orders of the Board should not be enforced where hearings before the Board have shut off a party's right to produce evidence material to an issue.

The comment by the Court of Appeals (T. 187), as to what its ruling might be in a petition for enforcement **where evidence be presented to such court as to noncompliance** by the charging union, is not pertinent to the question which was before the court. The Court of Appeals, under Section 10 (e) of the Act, was required to consider the case **upon the record made before the Board.**

2. **Refusal to Recognize Union.**

The decision of the Board, sustained by the Court of Appeals, finding an unfair labor practice by the Company in refusing to recognize the union as bargaining agent for the driver-salesmen presents an important question under the Act and one which has not been decided by this Court.

This question involves a situation where the union has not been certified by the Board, has not been recognized by the employer, and where the employer has been advised by its employees that they desire to bargain for themselves. Under such circumstances, the decision that the Company was guilty of unfair labor practice in refusing to recognize such union is in the very teeth of the Act.

Section 9 (a) of the Act provides that representatives designated or selected for purpose of collective bargaining "by the majority of the employees in a unit appropriate for such purposes" shall be the exclusive representatives of all of the employees in such unit for the purpose of collective bargaining.

The machinery of the Act set up for determining an appropriate unit requires an election, Section 9 (c) (1) (5), and where there is application for judicial enforcement of the Board's order in an unfair labor practice proceeding involving representation, the Act requires that the record made by the Board in the certification proceeding must accompany the record of the Board in such unfair labor practice proceedings.

The decision of the Board and of the Court in the present case, however, makes it an unfair labor practice for a company to refuse to recognize a union where, though the union has filed a petition for certification, it has dismissed it, and there has been no election or certification proceeding, and the company has not recognized the union, but on the contrary has been advised by its employees that they desire to bargain for themselves.

It is believed that the Act contemplates under such circumstances there must be a certification by the Board before a company can be chargeable with an unfair labor practice in refusing to recognize such union.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

M. E. KILPATRICK,
Attorney for Petitioner.

1045 Hurt Building,
Atlanta, Georgia.

APPENDIX.

The pertinent provisions of the Labor Management Relations Act of 1947 (Act of June 23, 1947, 61 Stat. 136 et seq., 29 U. S. C. A. 141 et seq.), are as follows:

Sec. 9:

"(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . ." 29 U. S. C. A. 159 (a).

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a) or (ii), assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by a officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof . . . " 29 U. S. C. A. 159 (c) (1).

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript . . . " 29 U. S. C. A. 159 (d).

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secre-

tary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

> "(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and
>
> "(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor . . . " 29 U. S. C. A. 159 (f).

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has compiled with its obligation under this subsection . . . " 29 U. S. C. A. 159 (g).

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the

representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such a party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits . . . " 29 U. S. C. A. 159 (h).

Sec. 10:

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was pre-

vented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C) . . .'' 29 U. S. C. A. 160 (b).

''(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record

in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined, therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347) . . ." 29 U. S. C. A. 160 (e).

INDEX

	Page
Opinions below	1
Jurisdiction	2
Statute involved	2
Questions presented	2
Statement:	
A. The facts as found by the Board	2
B. Proceedings before the Board	7
C. Proceedings in the Court of Appeals	9
Argument	10
Conclusion	15
Appendix	16

CITATIONS

Cases:

Fay v. *Douds*, 172 F. 2d 720	13
Franks Bros. Co. v. *National Labor Relations Board*, 321 U. S. 702	14
International Association of Machinists v. *National Labor Relations Board*, 311 U. S. 72	14
McGuire v. *Blount*, 199 U. S. 142	13
National Labor Relations Board v. *Bradford Dyeing Association*, 310 U. S. 318	14
National Labor Relations Board v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840	10, 11, 12
National Labor Relations Board v. *Highland Park Manufacturing Co.*, No. 425, this Term	10
National Labor Relations Board v. *Wiltse*, 27 LRRM 2526	10
Smith v. *St. Louis & Southwestern Ry. Co.*, 181 U. S. 248	12
Stearns Co. v. *United States*, 291 U. S. 54	11
United States v. *Chemical Foundation*, 272 U. S. 1	12
Universal Camera Corp. v. *National Labor Relations Board*, 340 U. S. 474	13

Statute:

National Labor Relations Act, as amended by Labor Management Relations Act, 1947 (61 Stat. 136, 29 U.S.C., Supp. III, 141, *et seq.*):

Statute—Continued

	Page
Section 7	8, 16
Section 8 (a) (1)	8, 16
Section 8 (a) (3)	8, 16
Section 8 (a) (5)	15, 17
Section 9 (a)	15, 17
Section 9 (f)	7, 11, 17
Section 9 (g)	7, 11, 19
Section 9 (h)	7, 11, 20

Rules and Regulations of the National Labor Relations Board:

Series 5, Section 203.89	7
Series 5, Section 203.90	7
Series 6, 16 Fed. Reg. 1934, 1947, effective March 1, 1951, Section 102.90	7

In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 695

RED ROCK COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (T. 183-187) [1] is reported at 187 F. 2d 76. The findings of fact, conclusions of law, and order of the Board (T. 94-111) are reported at 84 NLRB 521.

---

[1] We adopt herein the designations employed in the petition for certiorari for the three separately paginated volumes which comprise the printed record before this Court: for the Transcript of Record in the court below, "T."; for the Appendix to the Board's brief in the court below, "B.A."; for the Appendix to petitioner's (Red Rock's) brief in the court below, "A".

JURISDICTION

The judgment of the court below was entered on February 15, 1951 (T. 188). A petition for rehearing, filed on March 1, 1951 (T. 189), was denied on March 9, 1951 (T. 197). The petition for a writ of certiorari was filed on April 24, 1951. The jurisdiction of this Court is invoked under Section 10 (e) of the National Labor Relations Act, as amended, and under 28 U. S. C. 1254 (1).

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C. Supp. III, 141, *et seq.*), are set forth in the Appendix, *infra,* pp. 17-21.

QUESTIONS PRESENTED

1. Whether, in an unfair labor practice proceeding against an employer, the Board must plead and prove the facts showing that the labor organization which instituted the charges has filed with the Secretary of Labor and the Board the documents required by Section 9 (f), (g), and (h).

2. Whether the Board's finding that petitioner refused to bargain collectively with the Union is supported by substantial evidence on the record considered as a whole.

STATEMENT

A. *The facts as found by the Board*—Upon the usual proceedings under Section 10 of the National

Labor Relations Act, as amended, the Board, on June 27, 1949, issued its findings of fact, conclusions of law, and order.[2] The pertinent facts may be summarized as follows:

Petitioner, a Georgia corporation engaged in the bottling and distribution of a soft drink, employed fourteen driver salesmen during the period involved in these proceedings (T. 96, 117-118, 140; B. A. 5, 6, 14).[3] Early in February, 1948, an organizational campaign among these employees was undertaken by Local No. 859, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, A.F.L. (hereinafter called the Union) (T. 119; B. A. 10-11). On February 23, 1948, two of the driver salesmen, the first to sign applications for membership in the Union, were discharged for their union activities (T. 101-103, 130, 138; B. A. 20-21, 22, 28, 30-31, 11, 29).[4]

Four days earlier, on February 19, having received applications for membership and authoriza-

---

[2] The Board's order was directed against the Red Rock Cola Company as well as petitioner. However, the court below denied enforcement against the Cola Company (T. 187), and no question as to that determination is being raised here. Accordingly, like petitioner (see Pet. 3), we make no further reference to the Cola Company.

[3] In this statement record references which precede a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

[4] Petitioner does not here question the correctness of the Board's finding that the two discharges of February 23 were for union activities.

tions to act as representative from ten of the fourteen driver salesmen (T. 104, n. 24, 140-141; B. A. 11-15, 21-23, 25-26, 29, 31-33, 35, 42, 46, 47, 49, 59-62, 73-76), the Union advised petitioner by telegram that it represented a majority of the driver salesmen and requested a meeting "to discuss the possibilities of a contract" (T. 103, 141; B. A. 14-15, 62-63). By letter dated February 23, petitioner's attorney replied to the telegram and asked the Union to call and arrange a meeting (T. 103, 141; B. A. 15-17, 63).

On the same day, which was also the day of the two discharges referred to above, petitioner's vice president and general manager, Satterthwait, prepared a petition for the signatures of the driver salesmen, addressed to himself, reading as follows (T. 98, 120-121; B. A. 51, 52, 77):

> You have informed each of us that you have received a telegram from a Union Organizer in which the Organizer says he represents the salesmen of the Red Rock Co.
>
> This letter is to advise you that each of us desires to bargain for himself, and is not represented by a Union.
>
> The Company is therefore authorized and directed to deal directly with the undersigned.

Satterthwait then called the driver salesmen individually to his office and showed each one the telegram from the Union and the petition he had prepared (T. 100, 121; B. A. 51-52). Two of the driver

salesmen were specifically asked to sign the petition (T. 99, n. 11; B. A. 44, 46). One was asked if he had been to a union meeting (T. 123; B. A. 31-32); another was asked whether he was a member of the Union (T. 99, n. 14, 124; B. A. 48); another was told that "we didn't need no representative come in and talk to him and his door is open at all times" (T. 123; B. A. 34); another was told "just to leave the union bunch alone and we would be all right" (T. 99, n. 14, 125; B. A. 50). Within 24 hours all of the driver salesmen had signed the document prepared by Satterthwait (T. 121; B. A. 77).

On or about February 24, Satterthwait drafted the following telegram addressed to the Union (T. 98, 121-122; B. A. 53, 67-73):

> I hereby withdraw my application for membership in your Union as of this moment.

Several copies of this telegram were made and they, like Satterthwait's petition addressed to himself, were shown to the driver salesmen, individually (T. 99, 123-125; B. A. 32-33, 34, 36-37, 45-46, 47, 49-50). Verbatim copies of this telegram were apparently signed and sent by all of the driver salesmen who had been shown them (T. 121; B. A. 67-73), including one who had not joined the Union (T. 126-128, 129; B. A. 38).

On about February 26 or 27, a meeting was held between petitioner's attorney and the Union's business agent (T. 103; B. A. 16). At this meeting, in

refusing the business agent's request for a consent election to resolve any question concerning the Union's majority status, petitioner's attorney stated "that the company didn't want any union, and they were going to * * * use all methods to prevent a union in the Red Rock Cola Company" (T. 103-104; B. A. 16).

On March 1, having received the telegrams drafted by Satterthwait announcing the withdrawal of a number of the driver salesmen (Tr. 141; B. A. 17-18, 67-73), the Union wrote to petitioner renewing its request for recognition. Referring to the two discharges for union activities and to petitioner's successful efforts to procure its employees' signatures to anti-union documents, the Union urged "that the only fair way of determining this matter would be conducting an election by secret ballot in order that your employees would be able to express their real desire" (T. 104, 141; B. A. 16, 64-65). In a reply dated March 2, petitioner stated that "the employees have indicated voluntarily and without compulsion whatsoever that they wish to deal directly and individually with the company and that they are not represented by you or your Union," and "that there is no occasion for holding an election" (T. 104, 141-142; B. A. 17, 65-66). No further meetings or correspondence took place between petitioner and the Union (T. 142).

B. *Proceedings before the Board*—Several times during the hearing before the trial examiner petitioner urged dismissal of the complaint on the ground that the Board had not shown compliance by the Union with Section 9 (f), (g), and (h) of the Act (Appendix, *infra,* pp. 18-21) (T. 48, 54, B. A. 1, 15, 17, 19, 25). The various motions and objections raising this contention were all denied. At the outset of the proceedings before the Board, petitioner had served a subpoena upon the Board's regional director calling for production of copies or originals of the non-Communist affidavits filed by the Union's officers in accordance with Section 9 (h). On motion of the regional director—citing Board Rules and Regulations, Series 5, Sections 203.89 and 203.90,[5] urging that the evidence sought was immaterial, and pointing out that the documents were in any event no longer in his possession —this subpoena was quashed (T. 33-34, B. A. 2). Similarly, a subpoena directed to the Union's representative, seeking copies of the materials filed under Section 9 (f), (g), and (h) was quashed (T. 35-39, B. A. 2-3). In his intermediate report, the trial examiner stated that he found no merit in petitioner's "contention that compliance with Section 9 (f), (g), and (h) must be affirmatively

[5] Section 203.90 directed Board employees, unless otherwise instructed by the Board or General Counsel, to decline to produce or present Board files, documents, or records in response to subpoenas. This regulation now appears as Section 102.90 of the Board's Rules and Regulations, Series 6, 16 Fed. Reg. 1934, 1947, effective March 1, 1951.

shown by pleading and proof in order to give the Board jurisdiction to issue its complaint and proceed to hearing" (T. 116).

Excepting to the trial examiner's report, petitioner urged before the Board that there was error in the failure to require an affirmative showing of the Union's compliance with Section 9 (f), (g), and (h) and pointed out that, after the quashing of its subpoenas, it had "made an offer of proof that if permitted in evidence the documents called for would show that the charging union had in fact not complied with the filing requirements of Section 9" (T. 70-71). In affirming the trial examiner's rulings, the Board referred to its previous decisions holding that the question of compliance with the filing requirements is not a matter for litigation by the parties. "Moreover," the Board declared, "we are administratively advised that the Union has fully complied with the filing requirements of the amended Act" (T. 95, n. 2).

On the merits, the Board found that, by interfering with, restraining, and coercing its employees in the exercise of rights guaranteed by Section 7 (*supra,* pp. 3-5), petitioner had violated Section 8 (a) (1) of the Act.[6] Secondly, the Board found that, by discriminatorily discharging the two employees (*supra,* p. 3), petitioner had violated Section 8 (a) (3) of the Act. Finally, the Board

[6] This finding, like the finding of discriminatory discharges, is not challenged by petitioner here.

found that petitioner had refused to bargain collectively with the Union in violation of Section 8 (a) (5) and (1) (T. 98-106). The Board ordered cessation of the unlawful practices it had found, reinstatement of the employees wrongfully discharged with back pay, and the posting of appropriate notices (T. 107-109).

C. *Proceedings in the Court of Appeals*—In granting enforcement of the Board's order against petitioner (see note 2, *supra*), the Court of Appeals for the Fifth Circuit found that the record considered as a whole so clearly supported the Board's findings as to require no discussion (T. 184-185). As to the question of compliance with Section 9 (f), (g), and (h) of the Act, the court observed that petitioner had relied before the Board, and must therefore rely in court, "not upon any proof of its own that the Union had not complied, but upon what it deems the failure of the Union and Board to carry their burden" (T. 184). The court put to one side, therefore, questions which might conceivably arise where there was clear and positive proof that the Board had issued a complaint on a charge of a non-complying union or where an offer was made to present such proof in refutation of an announcement of compliance by the Board (T. 186-187). The Court merely held that "if it was necessary for the Union charges to show compliance on their face, this was done," and that the Board was not required, as a condition

to the exercise of its jurisdiction, to plead and prove the Union's compliance (T. 185-186, 187).

ARGUMENT

1. The conclusion that the Act does not require the Board to plead and prove that a charging union has complied with the filing requirements of Section 9 (f), (g), and (h)—a conclusion concurred in by the two other courts of appeals which have considered this question [7]—is clearly correct. The decision could be sustained, we believe, on the broader ground to which the petition for certiorari is addressed—that factual questions as to whether a charging union has complied with Section 9 (f), (g), and (h) are not litigable by the parties at all. However, this question was neither reached by the court below nor was it in any way necessary to its decision. For the court expressly and properly reserved judgment on the issues which might arise where there was proof or an offer of proof *of facts* showing that the Union was not actually in compliance. Cf. *National Labor Relations Board* v. *Wiltse*, 27 LRRM 2526, 2531 (C. A. 6).[8] And since

[7] *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.*, 180 F. 2d 840 (C. A. 4); *National Labor Relations Board* v. *Wiltse*, 27 LRRM 2526 (C. A. 6).

[8] Compare *National Labor Relations Board* v. *Highland Park Manufacturing Co.*, No. 425, this Term, slip op. pp. 3-4, where this Court found it unnecessary to decide whether a factual issue relating to compliance would be subject to judicial review. As shown in our discussion which follows, the question thus left open is not presented here in any substantial sense. At issue here is the simpler question whether a bald, general assertion that the Union has not complied requires the Board to rehearse for the record the details of the

the holding that the Board is under no affirmative burden to prove the factual details of the Union's compliance is wholly dispositive of this case, review by this Court is not warranted.

As the court below pointed out (T. 186), nothing in the Act suggests a need for allegation and proof of the Union's compliance. See *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Co.,* 180 F. 2d 840, 845 (C. A. 4). It is clear, of course, that the Board must determine, before issuing a complaint on a charge filed by a labor organization, that the organization has filed with the Secretary of Labor and the Board the various documents required by Section 9 (f), (g), and (h).[9] It by no means follows, however, that having ascertained the facts of compliance, the Board must allege in its complaint that it has performed this plain duty or spread upon the record of its unfair labor practice proceeding the union's various reports, certificates and affidavits.

The very issuance of the complaint—plus, in the present case, the Board's express assurance that compliance has been administratively determined (T. 95, n. 2)—raises a well-founded presumption that the Board has acted properly, that the Union has in fact filed the necessary papers. *Stearns Co.*

documents which have been filed with the Board and the Secretary of Labor and found complete.

[9] In order to make such determinations, the Board has created rather elaborate administrative machinery to keep a continuing check on the recurrent reports and other documents which labor organizations must file to comply with Section 9. The unit directly responsible for this task is called the Affidavit Compliance Branch.

v. *United States,* 291 U. S. 54, 63; *United States* v. *Chemical Foundation,* 272 U. S. 1, 14-15; *Smith* v. *St. Louis and Southwestern Ry. Co.,* 181 U. S. 248, 258; *National Labor Relations Board* v. *Greensboro Coca Cola Bottling Company, supra,* at 844-845. At least in the absence of some showing that the Board has misconceived or disregarded its responsibility, this presumption amply satisfies petitioner's demand for demonstration that the law has not been flouted.[10]

Nor is petitioner aided by its so-called "offer of proof" (Pet. 4) which consisted of nothing more than an announcement by its attorney that if the papers required to be filed under Section 9 (f), (g), and (h) had been produced by the Board's regional director and the Union's representative in response to his subpoenas, they would show that compliance had not been effected (T. 71, 185, n. 2, A. 9). Pretermitting the uncontradicted statements of the regional director and the Union's representative that they did not have the documents in question (T. 34-37),[10] petitioner merely asserted that the documents would have turned out to be insufficient in some unspecified respect to show compliance "with the filing requirements of Section 9"; there was no offer to prove any particular fact which would show insufficiency. As the court below properly held,

[10] The regional director also pointed out that the Board's regulations would have prevented production of the papers even if he had had them. *Supra,* p. 7.

this bare statement constituted "no effort to prove affirmatively that there was no compliance" (T. 184). Cf. *McGuire* v. *Blount,* 199 U. S. 142; *Fay* v. *Douds,* 172 F. 2d 720, 724-725 (C. A. 2).[11] At most, this vague pronouncement was simply a reiteration of the attempt to saddle the Board with a burden of proving compliance—nothing more, that is, than a claim, unsupported by facts, that if the Board undertook the burden it would fail.

2. Petitioner's argument (Pet. 2, 7) that the record as a whole lacks substantial evidence to support the Board's finding of an unlawful refusal to bargain, far from suggesting the kind of "rare instance" where such a contention might be appropriate for review by this Court (see *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, 491), is plainly without merit. The evidence showed, and the Board accordingly found, that petitioner unlawfully discharged two employees for union activities, "interrogated and coerced other employees, * * * prepared and circulated a petition and telegrams intended to deny the authority of the Union to represent [its] employees in collective bargaining," and persistently rejected the Union's efforts to demonstrate that it represented a majority of the employees (T. 104; see pp. 3-6, *supra*). Against

[11] "Nebulous and declamatory assertions, wholly unspecified, must not stand in the path of an effective discharge of the Board's duties * * *." 172 F. 2d, at 725.

the background of these findings, which are not even contested here, there is no basis for petitioner's assertion (Pet. 12, 13) of the question whether an employer must bargain with a union when it "has been advised by its employees that they desire to bargain for themselves."

Equally baseless is the notion (Pet. 9, 12-13) that the refusal to bargain was rendered lawful because the Union had not been certified by the Board, or recognized by petitioner, as bargaining agent. Section 8 (a) (5) of the Act makes it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)." Section 9 (a) declares that representatives "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit * * *." It is well settled that no prior election or certification is required to sustain a finding by the Board that an employer has wrongfully refused to bargain with the representatives of a majority of his employees in an appropriate unit. *E.g., National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318; *International Ass'n of Machinists* v. *National Labor Relations Board,* 311 U. S. 72; *Franks Bros. Co.* v. *National Labor Relations Board,* 321 U. S. 702. As for petitioner's refusal to "recognize" the

Union—assuming this to mean it in good faith questioned the Union's majority—the course of anti-union conduct proved at the hearing fully supports the Board's contrary finding (T. 105) that petitioner "was not motivated by a bona fide doubt of the Union's majority but by a studied purpose to foreclose the Union from establishing its majority in a Board proceeding and thereby to avoid [its] statutory duty to bargain."

CONCLUSION

The decision below is correct and presents neither a conflict of decisions nor any substantial question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

GEORGE J. BOTT,
General Counsel.
DAVID P. FINDLING,
Associate General Counsel.
MOZART G. RATNER,
Assistant General Counsel.
MARVIN E. FRANKEL,
Attorney,
National Labor Relations Board.

MAY, 1951.

APPENDIX

The pertinent provisions of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), are as follows:

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *.

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *.

* * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

* * * * *

☆ U. S. GOVERNMENT PRINTING OFFICE 1951 941648 887